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## DECISION

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-203694

DATE: February 8, 1982

MATTER OF: Mark II, Inc.

## DIGEST:

1. Where (1) business card attached to bid and Data Universal Numbering System (DUNS) number listed in bid indicate that bidder is Belle & Beau Clothiers, a corporation; (2) representation and certification in bid indicates that bidder is a corporation; and (3) principal of Belle & Beau Clothiers signed bid in several places as president, bidder is sufficiently identified as Belle & Beau Clothiers notwithstanding designation in bid of Belle & Beau Tailors, which is not a registered corporation, but appears to be a name used by bidder to describe corporation.
2. Contention that certificate of competency (COC) was issued by Small Business Administration (SBA) in bad faith because protester's data relating to cost of performance was not considered by that agency and COC process delayed award permitting prospective awardee to obtain equipment and finances necessary to be found responsible is without merit as SBA is under no obligation to consider financial data from a competing bidder and contracting agency may at its discretion withhold award until SBA completes its COC process.
3. Submission of bid samples which allegedly were produced by someone other than bidder does not require rejection of bid where samples were to establish bidder's capability of performance and there was no requirement that the bidder itself produce the samples.
4. Contention that bid is nonresponsive because bidder allegedly did not intend to comply with requirement to provide printing machinery at time of performance is without merit where bid unequivocally evidences intent to comply with requirement.

5. Allegations concerning allegedly improper actions by contracting officials which took place more than ten working days prior to the filing of this basis of protest with GAO are untimely filed.

Mark II, Inc. protests the award of a contract under invitation for bids (IFB) DABT31-81-B-0045. The Army issued the IFB as a small business set aside for altering of military clothing and for printing name plates and name tapes.

Mark II, the incumbent contractor, contends that the contract was awarded to an entity other than the entity which submitted the bid, that the Small Business Administration (SBA) issued a certificate of competency (COC) under circumstances tantamount to fraud, and that the low bid was nonresponsive with respect to the requirement to submit bid samples and the requirement to furnish certain printing equipment. We find these contentions to be without merit and, therefore, deny the protest in part. Mark II also contends that procuring officials acted improperly by attempting to obtain from Mark II certain information requested by the eventual awardee. This basis of protest was untimely filed. We, therefore, dismiss this part of the protest.

#### IDENTITY OF THE BIDDER

Bids were opened on June 5, 1981. The low bid designated "Raymond S. Dennis, Belle and Beau Tailors" as the bidder. The agency reports that a business card attached to the front page of the bid bore the name "Belle & Beau Clothiers" and listed Raymond S. Dennis as chief fashion consultant. Correspondence from Mr. Dennis preceding the submission of bids and after bid opening was on stationery imprinted "Belle & Beau Blazers Inc." The bid, business card and stationery all listed the identical street address. During the course of the procurement, contracting officials variously referred to the bidder as "Belle & Beau Tailors," "Belle & Beau Clothiers" and "Belle & Beau Blazers."

Belle & Beau's bid was so low (\$221,425.20 as compared with Mark II's next low bid of \$263,826.10) that the contracting officer requested verification of the bid. The request was addressed to Belle & Beau Blazers. Mr. Dennis verified the bid on Belle & Beau Blazers stationery.

On June 8, the contracting officer requested a preaward survey of Belle & Beau Clothiers by the Defense Contract Administration Services (DCAS), which eventually found Belle & Beau Clothiers to be nonresponsible. The Army then forwarded the matter of responsibility to SBA. On August 17, SBA issued a COC to Belle & Beau Clothiers. The Army awarded a contract on August 29, addressing the notification of award to Belle & Beau Tailors.

Mark II points out that both Belle & Beau Clothiers and Belle & Beau Blazers are corporations registered in Missouri by Mr. Dennis. Belle & Beau Blazers forfeited the right to do business in January 1981. Belle & Beau Clothiers is a corporation in good standing. The precise status of Belle & Beau Tailors is not demonstrated by the record. Mark II contends that because of the multiplicity of entities associated with the bid, a bidder cannot be identified and the bid must be rejected.

A contract cannot be awarded to any entity other than the one which submitted the bid. 41 Comp. Gen. 61 (1961); Transco Security, Inc., of Ohio, B-200470, April 15, 1981, 81-1 CPD 287. We have recognized, however, that the names of the bidding entity need not be exactly the same in all the bid documents so long as it can be established that the differently identified entities are exactly the same. Jack B. Imperiale Fence Co., Inc., B-203261, October 26, 1981, 81-2 CPD 339. We find that in this case the bid sufficiently identified Belle & Beau Clothiers as the entity submitting the bid to prevent Mr. Dennis from avoiding the contract after bid opening, if his interests so dictated.

Only two entities, Belle & Beau Clothiers and Belle & Beau Tailors, are named or referred to in the bid. Contracting officials apparently referred to Belle & Beau Blazers only because Mr. Dennis used Belle & Beau Blazers stationery when corresponding with the Army. Although the references to Belle & Beau Blazers created additional confusion with respect to the procurement, they are not relevant to the issue of the identity of the bidder because Belle & Beau Blazers does not appear in any of the bid documents.

Mr. Dennis represented in the bid that the bidder operates as a corporation incorporated in the State of Missouri. In addition, Mr. Dennis filled in (albeit incompletely) the corporate certification portion of the bid and signed the certification as president. He also indicated on the bid that the corporate seal could be obtained at his attorney's office. These facts identify the offering entity as a corporation.

Belle & Beau Tailors is neither registered as a corporation nor as a trade name for a partnership or sole proprietorship. Belle & Beau Clothiers, on the other hand, is a registered Missouri corporation in good standing. Additionally, Belle & Beau Clothiers was identified with the bid by a business card attached to the first page and by a Data Universal Numbering System (DUNS) number cited in the bid which is listed as belonging to Belle & Beau Clothiers.

Mark II questions whether the business card was attached at the time the bid was submitted. A representative of Mark II present at bid opening does not recall seeing the card. Although contracting officials could not specifically recall seeing the card at bid opening, they contend that no one outside the procurement office had access to the bid to affix the card after bid opening. Mr. Dennis states that he affixed the card prior to mailing it. Additionally, the fact that three days after opening officials requested a preaward survey of Belle & Beau Clothiers tends to support the claim that the card was affixed to the bid as of opening.

In any event, the bid, signed by Mr. Dennis as president, clearly stated that the bidder was a corporation and since Belle & Beau Clothiers was the only corporation registered by Mr. Dennis which was referred to at least indirectly by the DUNS' number in the bid, we find that the bid was in fact submitted by Belle & Beau Clothiers. We, of course, recognize that the bidder designated on the face of the bid was Belle & Beau Tailors. In our view, however, Belle & Beau Tailors, which is not registered as a separate corporation and has the same address, phone number and owner as Belle & Beau Clothiers, is not a distinct entity but merely another name used by Mr. Dennis to describe his corporation. Consequently, we believe that Belle & Beau Clothiers and Mr. Dennis would not be able to avoid the obligations of the bid and the agency did not act unreasonably in accepting the bid as one submitted by a single entity. See Jack B. Imperiale Fence Co., Inc., supra.

#### CERTIFICATE OF COMPETENCY

Mark II contends that the COC was issued fraudulently or in willful disregard of the facts. The SBA's COC determinations are conclusive. 15 U.S.C. § 637(b)(7)(A)(Supp. III 1979). Our Office will not review SBA's decisions to award a COC absent a showing of fraud on the part of Government officials, of such willful disregard of facts as to imply bad faith, or of failure on the part of these officials to consider vital information bearing on a small business's compliance with definitive

responsibility criteria, Diesel Energy Systems Co., B-203781, July 8, 1981, 81-2 CPD 24. We find that the points cited by Mark II in support of its argument do not prove or even suggest fraud or bad faith. Further, the protester does not show that any specific information which should have been considered was not considered by SBA.

In support of its allegation of bad faith Mark II contends that Belle & Beau's bid price is insufficient to generate the cash flow necessary to meet labor expenses. In this regard, Mark II criticizes the SBA's refusal of Mark II's offer to supply cash flow data pertaining to Mark II's performance of the predecessor contract. SBA, however, is not required to consider data generated by a private party whose interests are opposed to the firm being evaluated. Moreover, the fact that the protester does not agree with SBA's assessment of the adequacy of Belle & Beau's financial resources to perform the contract does not show that SBA's determination was based on fraud or bad faith.

Mark II asserts that the most significant act of bad faith by the SBA was the extended length of time taken before the COC was issued. Mark II alleges that both the Army and SBA delayed the procurement process for two months in order to enable Belle & Beau to obtain the necessary financial resources and equipment to become responsible.

We find this allegation to be completely without merit. Bids were opened on June 5 and on June 8 contracting officials requested a preaward survey. It appears that DCAS originally concluded that Belle & Beau was responsible. On July 10, however, the surveying office was informed that the processing of Belle & Beau's application for a bank loan was postponed because of the destruction of collateral for a loan. As a result, on July 14, DCAS amended the survey to reflect the changed circumstances, recommending no award due to lack of financial capability. We do not believe that the period from the June 8 request for a survey to July 14 is an unreasonably long duration in which to determine responsibility, especially in view of the fact that the survey had to be revised to reflect changed conditions.

The Army referred the matter of Belle & Beau's responsibility to SBA sometime after July 14. SBA issued the COC on August 17. We do not believe that this was an unreasonably long period. Mark II points out that Defense Acquisition Regulation (DAR) § 1-705.4(C) requires the contracting activity to withhold award for only 15 working days after a request for a COC. This provision, however, does not require that the SBA act

on the COC application or that the contracting officer make award to another bidder at the expiration of the 15-day period. In fact, we have specifically held that the contracting agency may at its discretion grant an extension for processing a COC application, Tennessee Apparel Corporation, B-194461, April 9, 1979, 79-1 CPD 247. Consequently, even if the protester's contention that the delay was due to the Government's desire to permit Belle & Beau to acquire financing, we do not believe that such action would necessarily be improper or constitute fraud or bad faith. See 49 Comp. Gen. 619 (1970).

#### BID SAMPLES

The IFB required bidders to submit two name tape printing samples to be laundry-tested to determine whether they meet the specifications. The IFB stated that the low bidder would be required to conform to the name tape requirements after bid opening but prior to award and that two rejections of the sample would result in a determination that the bidder was nonresponsive. Name tapes delivered under any resulting contract would be required to conform to both the approved sample and the specifications.

Mark II believes that Belle & Beau did not produce the samples it submitted and contends that the failure to submit a sample which it produced should have resulted in the rejection of Belle & Beau's bid as nonresponsive. We disagree.

First, the IFB did not specify that the sample must be produced by the bidder. Moreover, although the IFB provisions relating to bid samples are somewhat confusing, the samples were required to enable the agency to determine the bidders' capability to produce acceptable name tapes. This was not, as Mark II argues, a matter of responsiveness. Matters pertaining to a bidder's ability to perform a particular contract are related to that bidder's responsibility. See Patterson Pump Company, B-202601, May 7, 1981, 81-1 CPD 362. As such, this matter was settled by SBA during the COC process which, as indicated above, is not subject to question by our Office in the absence of fraud, bad faith or SBA's failure to consider vital information. The protester does not allege any of these elements with respect to the approval of the bid samples.

## ALLEGED INABILITY TO OBTAIN EQUIPMENT

Mark II alleges that at the time of bid opening and at the time of award, Belle & Beau Clothiers did not have in its possession printing machinery critical to the performance of the contract. The IFB required the contractor to have the equipment available for use on the first day of performance. Mark II contends that Belle & Beau knew it could not obtain the equipment in time to perform and that, therefore, Belle & Beau did not at the time it submitted its bid intend to comply with the requirement. Thus, argues Mark II, Belle & Beau's bid should have been rejected as nonresponsive. We disagree. This contention, like that relating to the bid samples, concerns responsibility.

Responsiveness concerns whether a bidder has unequivocally offered to provide the product or service in conformity with the material terms and specifications of the solicitation. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. The determination of responsiveness must be made from the bid documents as of the time of opening. Peter Gordon Company, Inc., B-196370, July 18, 1980, 80-2 CPD 45. Belle & Beau's bid unequivocally evidenced its intent to conform with all terms and specifications, including the requirement to provide printing equipment. Upon acceptance of the bid, Belle & Beau became obligated to meet this requirement despite what its subjective intent at the time it submitted the bid may have been. Thus, the Army properly determined Belle & Beau to be responsive.

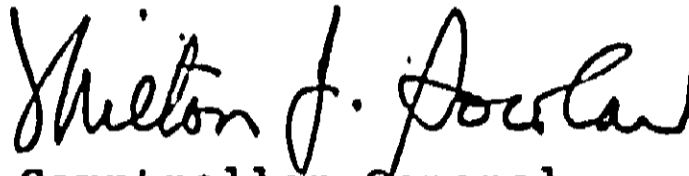
In assessing Belle & Beau's responsibility, DCAS, after investigating the matter with Belle & Beau's suppliers, concluded that Belle & Beau could obtain the required machinery in time to perform. The CBA, by issuing the COC, in effect, concurred in this determination. As noted above, we will not review the determination to award a COC absent a showing of fraud, bad faith or failure to consider vital information. Although Mark II has exhibited disagreement with the determination concerning the equipment, it has not demonstrated any of these elements.

## ALLEGED IMPROPRIETY BY CONTRACTING OFFICIALS

Mark II contends that contracting officials improperly attempted to assist Belle & Beau by attempting to arrange for interviews with Mark II's personnel and by attempting to obtain information concerning Mark II's production processes and equipment. According to Mark II, these incidents occurred on June 8 and July 9.

These allegations constitute grounds of protest separate and distinct from those grounds set forth in Mark II's initial submission. Mark II did not raise these allegations before our Office until September 11. Our Bid Protest Procedures require protests to be filed with our Office within ten working days of actual knowledge of the basis for protest. 4 C.F.R. § 21.2 (1981). We have consistently held that each ground of protest must independently meet the timeliness requirements. Southwest Marine, Inc., B-198701, August 15, 1980, 80-2 CPD 123. Since Mark II was aware of these incidents at the time they occurred and did not raise these matters within ten working days of the incidents, we will not consider these contentions.

The protest is denied in part and dismissed in part.

for   
Comptroller General  
of the United States